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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session, 17–21 November 2014

No. 55/2014 (China)

Communication addressed to the Government on 26 June 2014

concerning Ziyuan Ren

The Government replied to the communication on 21 August 2014.

The State is not a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. Ziyuan Ren, a Chinese national, was formerly a Chinese teacher at No. 10 middle school in Zoucheng City, Shandong Province. He has a strong interest in the issue of democracy and often participated in online discussions about achieving democracy in China. He wrote and published on the Internet an article entitled "The road to democracy", in which he expressed his view that people have the right to overthrow tyranny. Mr. Ren also established an organization called Mainland Democracy Frontline.

5. On 10 May 2005, Mr. Ren was arrested in Nantong City, Jiangsu Province, by the Jining City Public Security Bureau. The arresting officer did not show a warrant for his arrest. Mr. Ren was detained in Jining City Detention Center as of 16 June 2005.

6. On 30 September 2005, the Jining City Intermediate People's Court tried Mr. Ren on a charge of "subversion of State power" through "attempting to establish the Mainland Democracy Frontline" in order to "overthrow the reactionary and decadent rule of the Chinese Communist Party". Mr. Ren's lawyer maintained his innocence.

7. On 17 March 2006, the Jining City Intermediate People's Court sentenced Mr. Ren to 10 years of imprisonment, with three years of subsequent deprivation of his political rights, pursuant to article 105 (1) of the Criminal Law of the People's Republic of China. A number of activists supporting Mr. Ren were prevented from attending the hearing. Mr. Ren appealed his sentence to the Shandong Province High People's Court on the same day, but the Court rejected the appeal and his sentence was confirmed. Following the sentencing, Mr. Ren was transferred to Shandong Provincial Prison.

8. During various periods of his detention, Mr. Ren has been subjected to physical and psychological torture and mistreatment. He has been beaten, including with steel pipes, by the prison guards, which caused fractures to his vertebra and nose, and other serious injuries. He has also been denied medical treatment, causing his health to greatly deteriorate.

9. Furthermore, he has been held in solitary confinement and not been permitted to leave the floor where he has been held or to go outside of the prison building. He has also not been allowed to speak to fellow prisoners and prison officials have confiscated incoming letters and interrupted his telephone conversations, so as to completely isolate him. In March 2010, the authorities reportedly began to place Mr. Ren under strict surveillance. His family members have not been allowed to visit him and stopped receiving letters from him in March 2010.

10. At the last family visit in March 2010, Mr. Ren's father learned that he had contracted tuberculosis and was not receiving medical treatment. However, the authorities

have rejected his family's requests for him to be released on bail on medical grounds. Mr. Ren remains in detention at Shandong Provincial Prison.

11. The source submits that Mr. Ren's detention is arbitrary, as he has been tried, convicted and sentenced to imprisonment solely on the basis of the peaceful exercise of his right to freedom of opinion and expression, as guaranteed under article 19 of the Universal Declaration of Human Rights.

Response from the Government

12. The Working Group on Arbitrary Detention addressed a communication to the Government of the People's Republic of China on 26 June 2014, requesting detailed information about the current situation of Mr. Ren, and the legal provisions justifying his continued detention and their compliance with international law. In its response of 21 August 2014, the Government provided the Working Group with the following information:

13. "Mr. Ren has long expressed dissatisfaction with society and has disseminated his ideology to others, advocating the overthrow of the Government, including through the Internet and in personal encounters. He plotted to establish an illegal organization, the Mainland Democracy Frontline, collected funding for it, actively recruited members and wrote the organization's charter and the article 'The road to democracy', which sets out its guiding principles and theoretical basis, explicitly calling for 'an armed uprising to overthrow the current regime'. His behaviour thus constituted the offence of inciting subversion of State power.

14. On 13 March 2006, the Jining City Intermediate People's Court in Shandong Province, hearing the case in first instance, sentenced Mr. Ren to 10 years' imprisonment and 3 years' deprivation of his political rights for the offence of inciting subversion of State power. After the verdict of the initial trial was announced, Mr. Ren appealed. On 3 July 2006 the High People's Court of Shandong Province, having heard the case in accordance with the law, decided to reject the appeal and uphold the original ruling. During the initial proceedings, not only did Mr. Ren exercise his right to defend himself, but his designated lawyer also delivered a full submission in his defence. During the second hearing of the case Ren did not designate a defence lawyer, but the court of second instance attentively heard the defence he made on his own behalf and fully respected his procedural rights. Mr. Ren is now serving his sentence at a prison in Shandong Province.

15. On 20 November 2012, at around noon, Mr. Ren became involved in an altercation and a fight with another inmate over a trivial disagreement, as a result of which his nose was broken. He was diagnosed and treated at the prison infirmary, and he fully recovered. Prisons in Shandong Province recently conducted full medical check-ups for all inmates in custody, with follow-up examinations for all those with a history of tuberculosis. The examination showed that Mr. Ren's health was good, with no signs of abnormalities.

16. From the time he entered prison, Mr. Ren has enjoyed the right to communicate with people and receive visitors, in accordance with the law. The prison has, in accordance with the law, arranged for him to meet with his relatives and to make telephone calls to members of his family. On 6 March 2010, Mr. Ren violated the prison regulations during a telephone call with his father, and, in accordance with the law, on 15 April 2010, the prison temporarily suspended his access to visits and family telephone calls. Mr. Ren, having received guidance, undertook to observe the rules concerning visits and communications in the future. In June 2014 the prison, acting in accordance with the law, restored his ability to receive visits and family telephone calls.

17. From the outset, after entering prison, Mr. Ren failed to obey the prison administration, demonstrated quite poor conduct and seriously disrupted order in the

facility. The treatment he received from the prison was completely in keeping with the law. There was no situation in which he suffered ill-treatment or beatings or in which others were incited to treat him in such a manner. Under the patient instruction of the prison staff, Mr. Ren is now essentially able to comply with the prison rules and to obey the prison administration.

18. Since entering prison, Mr. Ren has never submitted any type of request for medical attention outside the facility. Mr. Ren is now in good health, and there is no reason for outside medical assistance."

Further comments from the source

19. In accordance with paragraph 15 of the Working Group's revised methods of work, the replies of the Government were brought to the attention of the source. The source provided its comments on 4 November 2014, as follows:

20. In regard to the claim that the behaviour of Mr. Ren constituted the crime of "subversion of State power", the source states that the booklet entitled "The road to democracy", in which Mr. Ren expressed his views that citizens have the right to overthrow tyranny, was not published in any form.

21. The source reports that, during the trial, the Prosecutor merely presented online articles discussing the pursuit of democracy and freedom in China under the name Mainland Democratic Frontline, an organization established by Mr. Ren. In the source's view, the Prosecutor failed to provide evidence that Mr. Ren had engaged in any behaviour intended to "subvert State power," or even that the organization Mainland Democratic Frontline existed and operated in reality (that is, not just as the name of an organization that appeared online).

22. Accordingly, the source maintains that the conviction of Mr. Ren is based merely on online articles in which Mr. Ren expressed his opinions on realizing democracy and freedom in China. The source reiterates that the conviction and sentencing of Mr. Ren clearly violated both international and Chinese laws, and that they constitute the Government's retaliation against Mr. Ren's expression of political ideas. The Chinese Constitution stipulates, in article 35, that "citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration". According to article 105 of the Criminal Law of the People's Republic of China, only conduct (and not one's ideas or opinions) proven to have the intention of "subverting State power or overthrowing the socialist system" may constitute the crime of "subversion of State power".

23. Regarding the allegations of the beatings suffered by Mr. Ren, the source contends that prison guards had specifically instructed inmates to attack him. Furthermore, according to the source, the frequent beatings suffered by Mr. Ren at the hands of guards or inmates in combination with the denial of medical treatment have led to a severe deterioration in his health.

24. As to the fact that "the prison temporarily suspended [Mr. Ren's] access to visits and family telephone calls" because he had "violated the prison regulations during a telephone call with his father", the source notes that the Government did not indicate what regulations Mr. Ren had allegedly violated that resulted in those years-long deprivations, nor provide any explanation or justification. The source also reports that Mr. Ren's father submitted an application for medical parole to the Shandong Provincial Prison on behalf of his son in February 2008, which was rejected by the prison authorities. The application was made after Mr. Ren had developed a serious case of tuberculosis in November 2007. After only two months of treatment in hospital however, Mr. Ren was forced to return to hard labour in the prison.

Discussion

25. In the original communication to the Working Group, the source reported that Mr. Ren had written and published an article online entitled "The road to democracy", in which he expressed his view that people have the right to overthrow tyranny. The source also submitted that Mr. Ren had established an organization called Mainland Democracy Frontline.

26. The Government confirmed those facts and that the activities mentioned constituted a criminal offence under the national law.

27. After receiving the Government's reply, the source retracted its previous assertions. In particular, in its comments, the source claims that the booklet entitled "The road to democracy", in which Mr. Ren expressed his views that citizens have the right to overthrow tyranny, was not published in any form. The source also submits that the "Prosecutor failed to provide evidence … that the organization Mainland Democratic Frontline existed and operated in reality." That contradicts the source's own original submission, wherein it stated that Mr. Ren established that organization.

28. The Working Group takes note of the relevant international guidelines, although they are not legally binding, according to which the freedom of expression can be restricted where legitimate national security interest is involved. That applies, in particular, to "incitement to violent overthrow of the government."[1] According to the guidelines, expression may be punished as a threat to national security only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.[2] In the case under consideration, the Working Group does not have sufficient information to conclude whether those criteria were met.

Disposition

29. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

> Considering the serious difference between the original allegations submitted by the source, its further comments to the Government's response, and the information provided by the Government, the Working Group considers that it is lacking sufficient information to conclude whether or not the detention of Mr. Ren is of an arbitrary nature.
>
> Therefore, in accordance with paragraph 10 (f) of the Working Group's revised methods of work, the Working Group decides to file the case.

30. In accordance with paragraph 33 (a) of its revised methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group considers it appropriate to refer the allegations of ill-treatment, including the prolonged suspension of family visits, to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 21 November 2014]

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[1] The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (E/CN.4/1996/39, annex), Principle 2.

[2] Ibid., Principle 6.